

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLORIA HILL,

Plaintiff,

vs.

SOUTHLAW PC, and
EDWARD E. BRINK,

Defendants.

8:19CV568

MEMORANDUM AND ORDER

Plaintiff, Gloria Hill, filed her pro se complaint (Filing 1) on December 30, 2019, and was granted leave to proceed in forma pauperis on January 2, 2020 (Filing 5). Defendants filed a motion to dismiss on January 24, 2020 (Filing 10), prior to the court completing its initial review of the complaint to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2).

Because the motion to dismiss only challenges whether the court has subject matter jurisdiction and whether the complaint states a claim upon which relief can be granted, Defendants effectively have waived service of process. *See* Fed.R.Civ.P. 12(h)(1)(A) (“A party waives any defense listed in Rule 12(b)(2)-(5) by ... omitting it from a motion in the circumstances described in Rule 12(g)(2)”).¹ Consistent

¹ Rule 12(g) states: “If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted.” Defendants have only moved to dismiss Plaintiff’s complaint under Rule 12(b)(1) and Rule 12(b)(6). Consequently, Rule 12(b)(4) and Rule 12(b)(5) defenses of insufficient process and insufficient service of process are waived. *See* Wright & Miller, 5B *Fed. Prac. & Proc. Civ.* § 1353 (3d ed.) (“[I]f a motion is made asserting any of the defenses listed in Rule 12(b), any objection to process must be joined in that motion or it will be deemed waived. Thus, a subsequent motion under Rule 12(b)(4) or Rule 12(b)(5) raising the defense or its inclusion in the answer will be barred and the court will proceed with the case.”)

with paragraph 6 of General Order No. 2016-02 (Filing 4), the court finds that this case should be removed from the pro se docket because Defendants effectively have waived service of process and Plaintiff is not a prisoner.

IT IS THEREFORE ORDERED that this case is removed from the pro se docket. The Clerk of the Court shall randomly assign new judges to this case and request a reassignment order from the Chief Judge.

Dated this 27th day of January, 2020.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive, flowing style.

Richard G. Kopf
Senior United States District Judge